

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Amendment of Section 73.622(b),)	
Table of Allotments,)	MB Docket No. 02-223
Digital Television Broadcast Stations)	RM-10520
(Avalon, California))	

NOTICE OF PROPOSED RULEMAKING

Adopted: August 5, 2002

Released: August 7, 2002

Comment Date: August 15, 2002

Reply Comment Date: August 23, 2002

By the Chief, Video Division:

1. The Commission has before it a petition for rulemaking filed by Pappas Southern California License, LLC (Pappas), licensee of analog television station KAZA-TV, NTSC Channel 54, Avalon, California. Avalon does not presently have a paired DTV channel allotment¹ and Pappas requests that the Commission initiate a rulemaking proceeding to amend the Table of Allotments for Digital Television Stations, 47 C.F.R. § 73.622(b)(2001), to allot either DTV Channel 29 or DTV Channel 47 to Avalon. Pappas proposes to operate at its currently authorized analog site on Mt. Wilson, with a maximum ERP of 500 kw and HAAT of 963 meters.

2. Pappas' petition is filed pursuant to Section 531 of the Public Health, Security, and Bioterrorism Preparedness and Response Act of 2002 (the Act),² which provides that:

(a) PAIR ASSIGNMENT REQUIRED. – In order to further promote the orderly transition to digital television, and to promote the equitable allocation and use of digital channels by television broadcast permittees and licensees, the Federal Communications Commission, at the request of an eligible licensee or permittee, shall, within 90 days after the date of enactment of this Act, allot, if necessary, and assign a paired digital television channel to that licensee or permittee, provided that –

- (1) such channel can be allotted and assigned without further modification of the tables of allotments as set forth in sections 73.606 and 73.622 of the Commission regulations; and
- (2) such allotment and assignment is otherwise consistent with the Commission' rules (47 CFR part 73.)

¹ The 1996 Telecommunications Act limited initial eligibility for DTV licenses to persons that, as of the date of the issuance of the license, held either a construction permit or license for a television broadcast station. Consistent with the statutory provision, the Commission issued initial DTV licenses simultaneously to all eligible permittees and licensees on April 3, 1997. See *Fifth Report and Order* in MM Docket No. 87-268, 12 FCC Rcd 12809 (1997). Because Pappas' application for a construction permit for a new station on Channel 54 (File No. BPCT-19860210KM) was not granted until June 2, 1998, it did not receive a paired DTV channel or license.

² Public Law No. 107-188, 116 Stat. 594, enacted June 12, 2002.

The Act further defines an eligible licensee or permittee as one that had an application pending for an analog television station construction permit as of October 24, 1991, which application was granted after April 3, 1997, and continued to hold a permit or license for the station as of June 12, 2002, the date of enactment of the Act. Thus, Pappas is within the class of parties defined as being eligible for a paired DTV channel allotment and assignment.

3. According to Pappas, either DTV Channel 29 or DTV Channel 47 is available for allotment to Avalon. At the request of USA Station Group Partnership of Southern California (USA), the former licensee of station KFTR-TV, NTSC Channel 46, Ontario, California, the Commission issued a *Notice of Proposed Rule Making* proposing the substitution of DTV Channel 29 for station KFTR-TV's assigned DTV Channel 47c.³ Pappas, which opposed USA's requested channel substitution, states that should the Commission decline to substitute a new allotment on DTV Channel 29 for the existing allotment of DTV Channel 47 to Ontario, then DTV Channel 29 will be available for allotment to Avalon pursuant to the Act. Alternatively, if the Commission adopts the proposed DTV channel substitution, then KFTR-TV's currently allotted DTV Channel 47 will be available for allotment to Avalon.

4. With respect to Pappas' request that the Commission initiate a rule making proceeding to allot DTV Channel 29 to Avalon, by *Report and Order* adopted July 23, 2002 (DA 02-1077), the Commission amended the DTV Table of Allotments to substitute DTV Channel 29c for Channel 47 at Ontario, California. Thus, DTV Channel 29 is not available for allotment to Avalon.

5. With respect to Pappas' request that the Commission initiate a rule making proceeding to allot DTV Channel 47 to Avalon, that request is contingent upon the licensing of the facilities specified in the outstanding construction permit for KOCE-DT, channel *48, Huntington Beach, California. In the context of rule making proceedings, the Commission has concluded that "processing petitions for rule making which would rely on other events by third parties to effect the compliance of the proposal with the separation requirements is not conducive to the efficient transaction of Commission business and imposes unnecessary burdens on the administrative resources" of the Commission.⁴ Accordingly, the Commission has a policy of not accepting petitions for rulemaking contingent on the licensing of facilities set forth in an outstanding construction permit.⁵ However, we believe it appropriate to waive this processing standard in this limited circumstance, where Congress has directed the Commission to allot a DTV channel to Avalon, if technically feasible, no later than September 12, 2002, and Pappas represents that the licensee of KOCE-TV has indicated that it intends to proceed with the construction of KOCE-DT's facilities on Mount Wilson in accordance with the terms of its construction permit.

6. Accordingly, we seek comments on the proposal to amend the DTV Table of Allotments, Section 73.622 of the Commission's rules, in the following manner:

City and State of License	Present Channel(s)	Proposed Channel(s)
Avalon, California	--	47c

7. Since the proposed site is within 275 kilometers of the US-Mexican border, concurrence by the Mexican government must be obtained for this allotment.

³ *Amendment of Section 73.622(b), Table of Allotments, Digital Television Broadcast Stations (Ontario, California)*, 16 FCC Rcd 2276 (2001).

⁴ *Amendment of Section 73.202(b), Table of Allotments, FM Broadcast Stations (Cut and Shoot, Texas)*, 11 FCC Rcd 16383 (P&R 1996).

⁵ *Id.*

8. The Commission's authority to institute rule making proceedings, showing required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein.

9. Interested parties may file comments on or before August 15, 2002, and reply comments on or before August 23, 2002, and are advised to read the Appendix for the proper procedures. Comments should be filed with the Secretary, Federal Communications Commission, Washington, D.C. 20554. Additionally, a copy of such comments should be hand-served on the petitioner, as follows:

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10. The Commission has determined that the relevant provision of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the TV Table of Allotments, Section 73.606(b) and 73.622(b) of the Commission's rules. *See Certification That Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend Sections 73.202(b), 73.504 and 73.606(b) of the Commission's Rules*, 46 FR 11549, February 9, 1981. The Regulatory Flexibility Act of 1980 would also not apply to rule making proceedings to amend the DTV Table of Allotments, Section 73.622(b) of the Commission's rules.

11. For further information concerning this proceeding, contact Joyce Bernstein, Media Bureau, (202) 418-1600. For purposes of this restricted notice and comment rule making proceeding, members of the public are advised that no *ex parte* presentations are permitted from the time the Commission adopts a Notice of Proposed Rulemaking until the proceeding has been decided and such decision is no longer subject to reconsideration by the Commission or review by any court. An *ex parte* presentation is not prohibited if specifically requested by the Commission or staff for the clarification or adduction of evidence or resolution of issues in this proceeding. However, any new written information elicited from such a request or a summary of any new oral information shall be served by the person making the presentation upon the other parties to the proceeding unless the Commission specifically waives this service requirement. Any comment which was not served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in the proceeding.

FEDERAL COMMUNICATIONS COMMISSION

Barbara A. Kreisman
Chief, Video Division
Media Bureau

Attachment: Appendix

APPENDIX

1. Pursuant to authority found in Sections 4(i), 5(c)(1), 303(g) and (r), and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, the Commission seeks comment on whether to amend the DTV Table of Allotments, Section 73.622(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. Showings Required. Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. Cut-off protection. The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered, if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See Section 1.420(d) of the Commission's Rules).

(b) With respect to petitions for rule making which conflict with the proposals in this *Notice*, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. Comments and Reply Comments; Service. Pursuant to applicable procedures set out in Sections 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or by persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served by hand on the petitioner by the person filing the comments. Reply comments shall be served by hand on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (See Section 1.420(a), (b) and (c) of the Commission's Rules.) The Commission permits the electronic filing of all pleadings and comments in proceeding involving petitions for rule making (*except in broadcast allotment proceedings*). See *Electronic Filing of Documents in Rule Making Proceedings*, GC Docket No. 97-113 (rel. April 6, 1998). Filings by paper can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although we continue to experience delays in receiving U.S. Postal Service mail). The Commission's contractor, Vistrionix, Inc., will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, N.E., Suite 110, Washington, D.C. 20002. The filing hours at this location are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building. Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743. U.S. Postal Service first-class mail, Express Mail, and Priority Mail should be addressed to 445 12th Street, S.W., Washington, D.C. 20554. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission, Washington, D.C. 20554.

5. Number of Copies. In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. Public Inspection of Filings. All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Reference Center (Room CY-A257) at its headquarters, 445 12th Street, S.W., Washington, D.C.